

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY WAYNE LABRANCH,

Petitioner,

No. CIV S-00-1849 GEB JFM P

vs.

CAL A. TERHUNE, et al.,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's March 30, 2005 denial of his application for a writ of habeas corpus together with a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required

1 showing or must state the reasons why such a certificate should
2 not issue. Fed. R. App. P. 22(b).

3 For the reasons set forth in the magistrate judge's
4 February 15, 2005 findings and recommendations, petitioner has
5 not made a substantial showing of the denial of a constitutional
6 right. Accordingly, IT IS HEREBY ORDERED that:

7 1. Petitioner's April 18, 2005 request for a
8 certificate of appealability is denied; and

9 2. The Clerk of the Court is directed to process
10 petitioner's appeal to the United States Court of Appeals for the
11 Ninth Circuit.

12 IT IS SO ORDERED.

13 Dated: June 9, 2005

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15 /s/ Garland E. Burrell, Jr.
16 GARLAND E. BURRELL, JR.
17 United States District Judge
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